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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
GTE Telephone Operating Companies)
Revisions to Tariff F.C.C. No. 1)

Transmittal Nos. 873, 874, 893, 909, 918
CC Docket No. 94-81

In the Matter of)
GTE California Incorporated Petition)
for Waiver and Authority to Reallocate)
Investment from Nonregulated to)
Regulated Use)

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
GTE California Incorporated)
Assessment of Forfeiture for Unlawful)
Provision of Services in Cerritos,)
California)

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**JOINT REQUEST TO WITHDRAW ALL PLEADINGS, DISCLAIMER OF
REFUNDS AND REQUEST TO TERMINATE INVESTIGATION**

GTE California Incorporated (GTECA), GTE Service Corporation (Service Corp.),
Apollo CableVision, Inc. (Apollo) and its principals (Thomas and Charlotte Robak)
respectfully request withdrawal of all pleadings in the above-captioned matters and that
the Commission terminate the tariff investigation initiated on July 14, 1994 as moot. In
addition, Apollo, its principals and Service Corp. formally disclaim any refunds which
might have been ordered as a result of the investigation.

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I. Procedural Status.

On April 22, 1994, the GTE Telephone Operating Companies (GTOCs), on behalf of GTECA, filed Transmittal No. 873 to establish video channel service for Apollo in Cerritos, California.¹ On that same day, GTECA filed Transmittal No. 874 to similarly provide video channel service to Service Corp. in Cerritos.

Four parties, Apollo, MCI Telecommunications Corporation (MCI), the National Cable Television Association (NCTA) and the City of Cerritos (City) filed petitions to reject or suspend and investigate Transmittal Nos. 873 and/or 874. Apollo and MCI argued for rejection of both Transmittal Nos. 873 and 874, while NCTA petitioned only against Transmittal No. 874. The City requested that the Commission suspend and investigate both transmittals.

On June 13, 1994, GTECA filed a Petition for Waiver and Authority to Reallocate Investment from Nonregulated to Regulated Use (Petition for Waiver), in order to allow its Cerritos video network investment to reflect the common carrier nature of the services being provided to Apollo and Service Corp. under Transmittal Nos. 873 and 874, respectively. Comments on GTECA's Petition for Waiver were filed by Apollo and NCTA/CCTA.

On July 14, 1994, the Common Carrier Bureau (Bureau) suspended Transmittal No. 873 and initiated an investigation into various issues raised by this tariff transmittal and GTECA's Petition for Waiver. On its own motion, the Bureau granted GTECA

¹ On July 12, 1994, GTECA filed Transmittal No. 893 to make certain technical changes to Transmittal No. 873. These modifications were effective July 18, 1994.

temporary Section 214 authority to provide video channel service to Apollo during the pendency of the investigation. *In re GTE Telephone Operating Companies*, 9 FCC 3613 (Com.Car.Bur. 1994) (*Cerritos Tariff Order*), *applications for review pending*.²

Also in the *Cerritos Tariff Order*, the Bureau found Transmittal No. 874 to be unlawful and rejected it. However, the United States Court of Appeal for the Ninth Circuit subsequently stayed the *Cerritos Tariff Order* "insofar as its rejects Transmittal No. 874." *GTE California Incorporated v. FCC*, No. 93-70924 (9th Cir., Sept. 7, 1994) (*GTECA v. FCC*).

On September 9, 1994, GTECA filed Transmittal No. 909 to add the tariff material it had removed in response to the rejection of Transmittal No. 874. On September 9, 1994, the Bureau concluded that Transmittal No. 909, being similar to Transmittal Nos. 873/893, raised substantial questions of lawfulness, suspended the tariff for one day, imposed an accounting order and included Transmittal No. 909 in its pending investigation of Transmittal Nos. 873/893. *In re GTE Telephone Operating Companies*, 9 FCC Rcd 5229 (Com.Car.Bur. 1994) (*Transmittal 909 Suspension Order*).³

² An Application for Review was filed by GTECA. An Application for Review and a Supplemental Application for Review of the *Cerritos Tariff Order* were filed by Apollo.

³ The Bureau acted on Transmittal 909 without waiting for interested parties to file petitions to reject or suspend and investigate GTECA's filing. *In re GTE Telephone Operating Companies*, DA 95-1796 (rel. August 14, 1995) (*Supplemental Designation Order*), at 2, n. 7. GTECA subsequently made certain technical modifications to Transmittal No. 909 in Transmittal No. 918, filed October 7, 1994, effective October 22, 1994.

In *GTECA v. FCC*, the Court of Appeals held that GTECA's Section 214 authority for Transmittal No. 909 expired on July 14, 1994. *GTECA v. FCC*, 39 F.3d 940 (9th Cir. 1994). GTECA's petition for rehearing and suggestion for rehearing *en banc* were denied by the Court on May 19, 1995 and the Court's mandate issued accordingly. *GTECA v. FCC*, Order (9th Cir., May 19, 1995).

On February 8, 1995, GTECA filed a Motion for Declaratory Ruling seeking a determination that Apollo's state court action against GTECA⁴ asked the state court to ignore the tariff rate for video channel service to Apollo and set its own rate in violation of the Act and the Commission's Rules. Apollo opposed this motion.

On June 29, 1995, Apollo filed a Request for Issuance of Notice of Apparent Liability, alleging that GTECA was providing video channel service to Service Corp. without Section 214 authority. GTECA did not separately respond to this Request, believing that the matters raised therein were being considered in the consolidated tariff investigation.

On July 28, 1995, GTECA submitted a request for Section 214 authorization for the facilities used to provide video channel service to Service Corp. in Cerritos. *In the Matter of the Application of GTE California Incorporated For authority pursuant to Section 214 of the Communications Act, as amended, to continue the provision of video channel service to an affiliate in Cerritos, California and for temporary authority pursuant to Section 63.04 of the Commission's Rules*, File No. W-P-C-7097. On July

⁴ *Apollo CableVision, Inc. v. GTE California Incorporated, et al.*, No. CIV 142800 (Cal. Super. Ct., Ventura Cnty.).

28, 1995, the Bureau granted GTECA temporary Section 214 authority to provide video channel service to Service Corp. during the pendency of this application. *In re GTE Telephone Operating Companies*, DA 95-1679 (rel. July 28, 1995). This temporary grant was confirmed in the Bureau's *Supplemental Designation Order*, at ¶¶ 4, 32.

On August 10, 1995, Apollo submitted a Freedom of Information Act (FOIA) request seeking release of certain documents relative to the Commission's audit of GTECA's Cerritos operations. GTECA opposed this request. On October 11, 1995, Apollo moved the Commission to defer all action on GTECA's Section 214 application with respect to Service Corp. until the Commission acts on Apollo's FOIA request.

On January 11, 1996, by Special Permission No. 96-17, the Bureau authorized GTECA to withdraw on one day's notice all tariff materials relative to the provision of video channel service to Apollo and Service Corp. in Cerritos. With the consent of both Apollo and Service Corp., these tariff materials were withdrawn on January 16, 1996. GTECA no longer provides video channel service to either Apollo or Service Corp. in Cerritos.

II. Joint Request to Withdraw All Pleadings.

GTECA, Service Corp., Apollo and its principals jointly request withdrawal of all pleadings in these proceedings, specifically including those set forth below. Each party consents to such withdrawal by the other(s).

- Apollo's Petition to Reject or Suspend Tariffs, dated May 17, 1994
- GTECA's Application for Review, dated July 26, 1994
- Apollo's Application for Review, dated August 1, 1994
- GTE's Motion for Declaratory Ruling, dated February 8, 1995

- Apollo's Supplement to Petition to Reject Tariffs, dated June 20, 1995
- Apollo's Freedom of Information Act Request, dated August 10, 1995
- Apollo's Supplemental Application for Review and Petition for Expedited Consideration, dated September 12, 1995

By a separate request filed January 11, 1996, GTECA has requested withdrawal of its Section 214 application with respect to the provision of video channel service to Service Corp (File No. W-P-C-7097). Service Corp. has consented to this request. Apollo and its principals therefore respectfully request withdrawal of their Petition to Deny this application, which was filed on September 13, 1995, and their Motion for Deferral of Ruling, which was filed on October 11, 1995.⁵

III. Disclaimer of Refunds and Request for Termination of Investigation.

Apollo (and its principals) and Service Corp., the customers for whom video channel service in Cerritos was being provided under the tariffs subject to investigation, formally disclaim any and all refunds which might result or might have resulted from a Commission order in the tariff investigation.

With the withdrawal of the above-referenced pleadings, together with GTECA's withdrawal of the tariff material relative to the provision of video channel service to Apollo and Service Corp. and GTECA's separately filed withdrawal of its Section 214 application with respect to the provision of video channel service to Service Corp., the parties believe that all issues designated for investigation in these proceedings are now

⁵ As noted in GTECA's separate request, withdrawal of this application will terminate GTECA's temporary Section 214 authority with respect to Service Corp. See *Supplemental Designation Order*, at ¶¶ 4, 32.

moot. The parties therefore respectfully request that the Commission terminate the tariff investigation as soon as practicable.⁶


IV. Conclusion.

For the reasons stated herein, GTECA, Service Corp. and Apollo respectfully request withdrawal of all pleadings in the above-captioned matters and that the Commission terminate the tariff investigation initiated on July 14, 1994 as moot.

Respectfully submitted,

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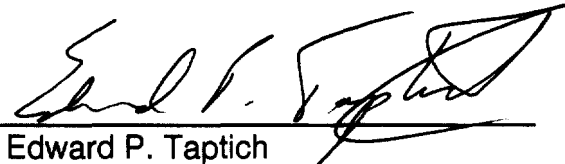
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January 17, 1996

⁶ In accordance with the *Cerritos Tariff Order*, termination of the investigation will terminate GTECA's temporary Section 214 with respect to the provision of video channel service to Apollo.

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Joint Request to Withdraw All Pleadings, Disclaimer of Refunds and Request to Terminate Investigation" have been mailed by first class United States mail, postage prepaid, on the 17th day of January, 1996 to all parties on the attached list.



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